No. 87-2120

In The

Supreme Court of the United States

OCTOBER TERM, 1987

RAYMOND JORDA,

Petitioner,

-vs-

CITY OF NEW BRUNSWICK, and
NEW BRUNSWICK POLICE DEPARTMENT,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the Superior Court of New Jersey, Appellate Division denied a New Jersey citizen due process by utilizing a more stringent burden of proof than that set forth by this Court to establish a 42 U.S.C. Section 1983 claim against a municipality?

2. Whether a municipality's policies and/or customs which are manifest in negligent training, supervision and monitoring of its police officers and which lead to constitutional deprivations can establish municipal liability under 42 U.S.C. Section 1983?

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STATEMENT OF THE CASE

The Respondents, City of New Brunswick and City of New Brunswick Police Department, will accept the Statement of Facts as prepared by the Petitioner, Raymond Jorda, except to deny the assertion on Page 4 that a de facto policy existed in the New Brunswick Police Department fostering the use of violence and excessive force.

REASONS FOR DENYING THE WRIT

THE TRIAL COURT PROPERLY REFUSED TO ALLOW THE LACK OF COMPLAINTS AGAINST NEW BRUNSWICK POLICE OFFICERS TO BE USED AS SUBSTANTIVE EVIDENCE OF A POLICY NOT TO DISCIPLINE OFFICERS FOR ACTS OF VIOLENCE, AND THE TRIAL COURT PROPERLY GRANTED A DIRECTED VERDICT AGAINST THE DEFENDANT-THIRD PARTY PLAINTIFF AT THE END OF ALL THE EVIDENCE.

There was no statement, ordinance, regulation or decision officially adopted by the City of New Brunswick or Police Department of the City of New Brunswick that would lead to liability under Monell v. Department of Social Services, 436 U.S. 658; 98 S. Ct. 2018, 56 L.Ed. 2d 611 (1978). There was no official regulation or custom, and plaintiff's attempt to introduce the lack or absence of a record of complaints does not amount to an official policy of Civil Rights violations.

There was no evidence that the actions of Police Officers, McDonough and Grey, were part of an official policy of the City of

New Brunswick or City of New Brunswick Police Department to tolerate excessive violence. The evidence that was adduced only supported an argument that the actions of the officers were intentional and beyond proper police conduct and contrary to the training and policies of the Department. By the plaintiff's failure to offer any evidence that the type of conduct exhibited by McDonough and Grey was condoned by the City or Police Department, plaintiff failed to substantiate the policy which was a requisite of his proofs under Means v. City of Chicago, 535 F. Supp. 455 (E.D. Ill. 1982).

Plaintiff's argument that the trial court's decision to dismiss the case against the City and Police Department was error because plaintiff was barred from introducing evidence of a policy of civil rights is unfounded. It was clearly proper

for the trial court to prohibit the introduction of testimony concerning the lack of complaints when such testimony was to be offered as substantive evidence of a policy of civil rights violations. Since the testimony was properly barred, the dismissal of the entire case properly followed.

Plaintiff by-passes the fact that the officers involved had never been convicted of any criminal act and that there was no evidence of any prior civil actions similar in nature to this against the same officers.

Accordingly, there is no basis for an argument or allegation that evidence of prior similar acts on the part of other police officers existed. The fact that the City or Police Department does not maintain records of complaints filed against police officers, does not amount to evidence at all, let alone evidence of a policy of

tolerance of civil rights deprivations required under Delgado v. City of Newark, 165 N.J. Super. 477 (L. Div. 1979).

There was absolutely no basis to permit the trier of fact to decide that discipline was not enforced in the Police Department, because there was no evidence pointing to that conclusion upon which reasonable minds could differ. The plaintiff failed to meet the necessary burden established by Popow v. City of Margate, 476 F. Supp. 1237 (D.C.N.J. 1979). The only proofs that were properly before the Court demonstrated that the police officers in the City of New Brunswick were afforded their basic constitutional rights of equal protection of the laws and due process. No records are kept in the City of New Brunswick Police Department if a police officer is not convicted or if personnel action is not necessary. It would be a violation of the civil rights of a police officer to maintain records of allegations that are determined to be

unfounded and without merit. Only the lack of corrective action in the face of a stream of Police Department convictions for excessive use of force could be termed of any relevance! A complaint that does not result in a conviction cannot be a basis for reprimand by the City of New Brunswick Police Department or City of New Brunswick, or a black mark to remain in an officer's personnel file.

Any allegations of negligence against the City of New Brunswick arising out of the conduct of Officers McDonough and Grey were not sustainable as a matter of law. There was clearly no evidence that the intentional conduct of these officers was condoned by a policy of the City. Thus, there was no fact question to be decided by the jury concerning the liability of the City.

The decision of the trial court to exclude introduction of General Order No. 7 of the New Brunswick Police Department into evidence was not error. It would have been

error to have allowed counsel for plaintiff to argue that this Rule was admissible as substantive evidence to prove that the City of New Brunswick was in violation of the plaintiff's civil rights. It is incongruous to argue that an officer's lack of familiarity with the Rule of the Department intended to protect the public demonstrates a Department policy to ignore such rules, and that violation of Police Department Rules was considered to be good police practice!

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for writ of certiorari to review the judgment of the Superior Court of New Jersey, Appellate Division, should be denied.

Respectfully submitted,

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